

Application/Control No.: 10/691,427
Art Unit: 1751

REMARKS

Claims 23 and 25-37 as amended remain in the application. Claim 23 was amended to incorporate the limitations of previously presented claim 24 which has been canceled.

CLAIM REJECTIONS UNDER 35 USC § 103(a)

Claims 23-37 were rejected under 35 USC § 103(a) as being unpatentable over Madrange (US 5,143,518) in view of Cottard (US 2001/0023514). It was the Examiner's position that it have been obvious to modify the compositions of Madgrane with the amphoteric polymers of Cottard because Madrange teaches a hair dyeing composition comprising amphoteric homopolymers of dimethyldiallylammonium chloride (Merquat 100) and amphoteric copolymer of dimethyldiallylammonium chloride with acrylamide (Merquat 550) and Cottard (which teaches a kit) teaches a composition comprising amphoteric co-polymers of diallyldimethylammonium chloride/ acrylic acid (Merquat 280) and amphoteric co-polymer of dimethyldiallylammonium chloride/acrylic acid/acrylamide terpolymer (Merquat Plus 3330).

Applicants respectfully disagree with the Examiner's assertion that Madrange teaches a hair dyeing composition comprising amphoteric homopolymers of dimethyldiallylammonium chloride (MERQUAT®100) and amphoteric copolymer of dimethyldiallylammonium chloride with acrylamide (MERQUAT® 550) at col. 12, lines 40-45. According to the manufacturer's (Nalco Company) product literature, MERQUAT®100 is a highly charged cationic homopolymer and MERQUAT® 550 is a highly charged cationic copolymer. (emphasis added)

(www.nalco.com/ASP/industries_served/cosmetics/cosmetics_merquat.asp)

It is well known that an amphoteric polymer is a polymer bearing both anionic and cationic groups in the same molecule. Therefore, Madrange does NOT teach the use of amphoteric polymers as asserted by the Examiner. Thus, one having ordinary skill in the art at the time the invention was made would NOT have been motivated to modify the composition of Madrange by incorporating the

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amphoteric co-polymers of diallyldimethylammonium chloride/acrylic acid (MERQUAT® 280) and amphoteric polymer of dimethyldiallylammonium chloride/acrylic acid/acrylamide terpolymer (MERQUAT® Plus 3330) as taught by Cottard which are known amphoteric copolymers according to the Nalco Company product literature identified above.

Claims 23, 28, 31-33 and 37 were rejected under 35 U.S.C. 103(a) as being unpatentable over Millequant et al. (US 6,312,677 B1).

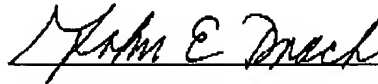
Applicants note that claims 24-27 were not rejected over the teachings of Millequant. Therefore, Applicants respectfully submit that claim 23 as amended is patentable over Millequant because claim 23 as amended now incorporates the limitations of previously presented claim 24. Furthermore, Applicants also submit that claims 23 and 25-37 as currently amended are patentable over the teachings of Madgrange and Cottard because the teachings of these references are not combinable for the reasons set forth above. Applicants further submit that claims 23 and 25-37 as currently amended are patentable over the individual teachings of Madgrange and Cottard because a prima facie case of obviousness cannot be made in each instance because each reference fails to teach or suggest all of the elements of claims 23 and 25-37 as currently amended. Specifically, as shown above, Madrange does not teach hair dyeing compositions comprising amphoteric polymers and Cottard does not teach hair dyeing compositions comprising dialkyl polysiloxanes. It is well settled that in order to establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. (See MPEP 2143).

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CONCLUSION

In view of the amendments to claims 23 and 25-37 and the remarks above, Applicants respectfully request reconsideration and allowance of all pending claims. Should any fees be due for entry and consideration of this Amendment and/or the accompanying RCE that have not been accounted for, the Commissioner is authorized to charge them to Deposit Account No.04-1406.

Respectfully submitted,



Dann Dorfman Herrell & Skillman
John E. Drach
Attorney for the Applicants and the Assignee
Registration Number 32,891
DANN DORFMAN HERRELL AND SKILLMAN
1601 Market Street, Suite 2400
Philadelphia, PA 19103-2307
TELEPHONE: (215) 563-4100
FACSIMILE: (215) 563-4044
Customer No. 000055495